

Appl. No. : 10/624,864
Filed : July 22, 2003

INTERVIEW SUMMARY

Interview of 9/20/05

Applicant thanks Examiner Phan for the telephonic interview conducted on September 20, 2005. During the interview, the finality of the Office Action was discussed. The Applicant's Representative noted that the previous Office Actions had not addressed the patentability of the elements in Claims 3 and 29, as well as the other dependent claims. It was noted that Claim 3 and 29 were among the Claims elected by the Applicant in response to the previous Restriction Requirement. It was noted that the presently cited reference did not teach the "M configuration" nor was the "M configuration" mentioned in the previous Office Actions. It was noted by the Applicant's Representative that each Office Action must be complete and clear and that the reasons why each claim was rejected put forth in the Office Action. It was agreed that upon submitting these issues in writing, that the finality of the Office Action would be withdrawn and the claims relating to the previously elected group examined in full.

Interview of May 5, 2005

Applicant thanks Examiner Phan for the in person interview conducted on May 5, 2005. Claim 1 was discussed as well as U.S. Pat. No. 5,797,951. It was agreed that the proposed amendments would seem to overcome the prior art but that further consideration of the prior art and proposed amendments were needed in order to clearly determine if the amendments had overcome the prior art. The amendments were directed to the invention shown in FIGs. 13. Claim language involving elements reciting connections of the telescoping arms above and below a plane of the perimeter and embodiments in which expansion occurred in both a radial and height direction were discussed.

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REMARKS

Claims 1, 3-8, 10-12, 14-30, 32, 36, and 37 are pending. Claims 1, 3-8, 10-12, 14-30, and 32 have been rejected. Claims 1, 3, 14, 16, 25, 28, 30, and 32 have been amended. New Claims 36 and 37 have been added. Support for the amendments and new claims can be found in the original claims and the specification, for example, in original Claims 1, 3, 14, 16, 25, 28, 29, and 30; in paragraph 0044; and FIGs. 13A-13G, 13H-13N, and 13O-13U. The figures and discussion disclose the M configuration where the telescoping arms “zigzag” back and forth in forming the perimeter or appear as a series of Ms or Vs. The figures demonstrate that the arrangement results in an increase in the angle between the telescoping arms as the perimeter of variable length is increased (*see, e.g.*, 13N vs. 13H). The figures demonstrate that the telescoping arms are connected above and below (or to the left and the right of as shown in FIG. 13N) a plane bisecting the device and defined by the perimeter of variable length. The figures demonstrate that as the perimeter of variable length is increased (*e.g.*, FIG. 13A v. FIG. 13G) the height of the device is increased as well (*e.g.*, FIG. 13H v. FIG. 13N). No new matter has been added by these amendments.

As noted previously, Applicant elected Species 6, represented by Figure 13. Applicant notes that the configuration of the telescoping arms, *e.g.*, the “M configuration” shown in FIGS. 13A-13U, serves to provide additional support and force against a lumen; thus, this configuration provides a fixation capability to the attachment device. Applicant notes that this structure of the embodiment in FIG. 13 is explicitly claimed in original Claims 3 and 29. Claim 3 has been amended as the elements of original Claim 3 have been incorporated into Claim 1. Claim 29 has not been amended. Thus, claims reciting the “M configuration” do not present new material to the original claim scope.

Requested Withdrawal of Finality of Office Action

As requested in the Interview of September 20, 2005, Applicant makes of record the request that the finality of the previous Office Action be withdrawn. As noted in the Interview Summary, even though Claims 3 and 29 had been elected in response to the previous Restriction Requirement, the “Final” Office Action did not address the elements recited therein. Additionally, the original Office Action did not address the elements recited in Claims 3 or 29.

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In particular, neither the “M configuration,” nor any similar aspect, was discussed in the Office Actions. As such, not all of the claims in the application have been addressed by the Office Actions. As agreed in the Interview of September 20, 2005, as the elements of these specifically elected claims have not been addressed, the finality of the Office Action should be withdrawn so that an Office Action can be issued which fully examines and allows or rejects each of the claims (*See, e.g.*, M.P.E.P. §707.07, 707.07(g), 707.07(f), 706.07, 706.07(d), 706.07(f), and 706.07(c)).

Prior Correspondence from the Patent Office

Applicant thanks the Examiner for keeping them informed when the previously sent Office Action failed to reach Applicant’s Representative. Applicant notes that there is an additional Paper, *i.e.*, the Interview Summary of May 5, 2005, which appears to be on PAIR, but Applicant’s Representative have not received a copy of. It is not clear if this paper was sent to Applicant’s Representative or not. In light of the previous issues, Applicant believes that this Paper may not have been sent. Applicant respectfully requests that the paper be resent with the next Action.

Rejection Under §102 in Light of Mueller (U.S. Pat. No. 5,797,951).

Claims 1, 3-8, 10-12, 14-30, and 32 have been rejected by the Examiner in light of Mueller. The rejection, in total, states that:

Mueller discloses an attachment device having a plurality of telescoping arms (12) and a fixation component (164) as is claimed (figures 1-5 and 9, column 2 lines 65-67, column 3 lines 1-67, column 4 lines 1-67 and column 5 lines 1-20).

The rejection does not assert that Mueller discloses an attachment device with a plurality of telescoping arms in a M configuration. Moreover, Mueller does not teach telescoping arms in a M configuration (*e.g.*, see FIGs. 13A-13U of the current Application). The Applicant pointed out this deficiency in the previous Response (page 10, last paragraph). While, the Office Action asserts that the Applicant’s arguments regarding the previous claims were considered but were “moot in view of the new ground(s) of rejection,” it appears that this element, and the previous remarks made regarding this element, may have been overlooked. Applicant respectfully requests that the next Action address each of the elements in the claims so that the record be as complete as possible as to why the claims have been allowed or rejected.

Applicant notes that the previous amendment was made in response to the Restriction Requirement and in anticipation of being allowed to submit a supplemental amendment which would have further directed the claims to the aspects shown in FIGs. 13A-13U. Due to an apparent miscommunication, this did not occur. However, in accordance with the previous two interviews, Applicant now submits the amended claims for the elected specie. Thus, the claims have been amended to incorporate aspects of the device shown in Figure 13A-13U. The following discussion highlights some of the additional differences between the device in Mueller and the presently claimed invention(s).

The device in Mueller contains telescoping arms that are connected so as to form a straight line when viewed from the side (or from the plane in which the telescoping arms expand). For example, see figures 4, and 6-8 of the '951 Patent, in which the device formed by the telescoping arms has a straight edge on its side. Thus, Mueller does not teach all of the recited elements of Claims 1, 14, 16, 25, 29, and those claims that depend therefrom (3-8, 10-12, 15, 17-24, 26, 27, and 30) as these claims require that the telescoping arms form something similar to a particular shape (*e.g.*, a M or V shape).

The device in Mueller is an expandable support member that is only expandable in two dimensions. That is, when the device is expanded, it only expands in the X and Y directions (for example, figures 4 and 5 of Mueller). The device in Mueller does not expand in the Z direction. In contrast, Claims 32 and 36 recite that an "increase in the perimeter of variable length results in an increase in a height of the device..." and "said telescoping arms connected so as to allow expansion of the attachment device in a direction perpendicular to said first plane" respectively. Claim 30 recites a similar element. An example of this is shown in FIGs. 13A, 13H, 13G, and 13N. The device in Mueller does not achieve or have this element (*see, e.g.*, figures 1-9).

The device in Mueller has telescoping arms that are all connected at points within the plane defined by the direction of expansion of the device (*e.g.*, the X, Y plane in figure 5). In contrast, Claims 28 and 30 (and dependent Claims 29 and 32) recite that the telescoping arms are connected above or below the plane. Thus, the device in Mueller does not achieve or have this element.

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The device in Mueller has telescoping arms that are connected so that the angle between the telescoping arms, when viewed from the side is a linear angle (*i.e.*, 180 degrees). This angle does not change as the device is expanded (see figures 4 and 5 of Mueller). In contrast, Claims 37 and 30 recite that there is a change in this angle as the device is expanded (*e.g.*, as shown in FIGs. 13A, 13H, 13G, and 13N). Thus, Mueller does not achieve or have this element.

We note that Claim 30 recites all of the above limitations, all of which would be appreciated by one of skill in the art upon review of the description and the numerous figures (*e.g.*, paragraph 0044 and FIGs. 13A-13U).


As noted above and in the specification, the embodiment in FIG. 13 has particular advantages due to the particular arrangement that other devices lack. Thus, the particular arrangement is not merely an insignificant modification, but a useful improvement of the state of the art. Additionally, Applicant notes that Claim 1 has been amended by including language that was effectively in original Claim 3; thus, the amendment cannot necessitate any rejection of the claim that should not have already been made in regard to original Claim 3.

As Mueller does not teach the above recited elements, Applicant respectfully requests that the rejection be withdrawn and the claims allowed. If the Examiner believes that there are any further issues which could be resolved or clarified through a discussion, the Examiner is invited to call the Applicant's Representative. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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